

Approved as Submitted: April 14, 2004

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – MARCH 17, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:01 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Sellers, and Mayor/Chairman Kennedy
Late: Council/Agency Member Chang (arrived at 6:05 p.m.)
Absent: Council/Agency Member Tate

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney Leichter announced the following closed session item(s):

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	4

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 6:45 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced that no reportable action was taken in closed session.

City Council Action

OTHER BUSINESS:

A-1. APPOINTMENTS TO LIBRARY COMMISSION AND THE PARKS AND RECREATION COMMISSION.

Council Services and Records Manager Torrez presented the staff report, recommending that the City Council interview applicant, Marilyn Librers, to fill a vacancy on the Parks & Recreation Commission. She further recommended that the Council defer appointments to the Parks & Recreation Commission until such time that the Council concludes its interview process.

The City Council interviewed Marilyn Librers to fill a vacancy on the Parks & Recreation Commission.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Directed** Staff to Extend the Recruitment Period for the Parks & Recreation Commission, and to Schedule Interviews to Fill Vacancies to the Library and Parks & Recreation Commission for Wednesday, April 14, 2004, 6:00 p.m.*

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, George Nale, Sister City Committee Member and Library Commissioner, led the Pledge of Allegiance.

PROCLAMATIONS

Mayor Kennedy issued a proclamation declaring March 2004 as *Colon Cancer Awareness Month*.

RECOGNITIONS

Mayor Kennedy recognized the Live Oak High School Girls Varsity Soccer Team and Coach Tony Vasquez for their achievement as Central Coast Section Co-champions.

CITY COUNCIL REPORT

Council Member Chang reported that she recently attended the Cities Association Board meeting where the Board discussed increasing City dues by 5%. Also, the Finance & Audit Committee met last night, and the Committee discussed several revenue enhancement scenarios without a decision being made to date. She indicated that the South County Regional Wastewater Authority will be holding a workshop next week and requested that Council Members forward comments on the direction the wastewater treatment should go. She stated that the Health Foundation met last Monday night with a presentation

being made by one of Morgan Hill's largest business park developers. She indicated that the developer is proposing a 60,000 square foot medical office facility that would include 30,000 square feet for doctor offices, and 6,000 square feet for a medical/surgical center and for an MRI. She felt that this is an exciting time for the community as the City has been battling the issue of restoring medical services for the past 3-4 years and that it appears that there are two entities that are willing to move forward with medical services.

Mayor Kennedy stated that he received a note from Joseph Mueller, executive Director to the Medical Health Foundation, indicating that Fritter Schulz, Physical & Occupational Therapy, and the Daughters of Charity are moving forward with the tenant improvements to the medical office building. This will allow Fritter Schulz to move into the building.

Mayor Pro Tempore Sellers announced that he and City staff had the opportunity to attend the California Parks & Recreation Society's annual conference. He indicated that the highlight of Friday night's event was the receipt by the City of Morgan Hill of the 2003 Award of Excellence for facility design and park planning for the Community & Cultural Center facility. He stated that staff performed an extensive process and detailed the significance of the facility. He acknowledged staff member Margarita Balagso for spearheading this effort. He indicated that a marketing package of the facility is now available. He mentioned that the City had strong representation on the part of staff in David Bischoff, Julie Spier and Margarita Balagso. He stated that he was please to return and share this recognition with the Council and the community.

CITY MANAGER REPORT

City Manager Tewes reported that in the past week there has been a change in the regulations affecting the chemical perchlorate. He addressed the regulatory framework, how this change might impact the City of Morgan Hill, and what other regulatory agencies are doing. He indicated that approximately 2 years ago, the City learned that the Olin Corporation, previous owner/operator of a road flare manufacturing plant, allowed the chemical ammonium perchlorate to get into the soil at their site and subsequently into the groundwater that provides the drinking water for most of South County. It is now known that the plume of perchlorate extends more than 10 miles from north of the Olin site on Tennant Avenue to Leavelsley in Gilroy. This plume has impacted many private wells in the San Martin area, but more important to the City of Morgan Hill and its 35,000 customers, has impacted the City's water supply. He indicated that there are a range of chemicals, both organic and inorganic that the City is required to test for and report to citizens on how the City is doing. He stated that this is reported in the City's annual Consumer Confidence Report. For many of these chemicals, the State has established a maximum contaminant level, a level beyond which you cannot serve water. He stated that perchlorate is so new to the regulatory framework that there is not a maximum contaminant level identified. However, State agencies are responsible for establishing this level and are proceeding through the required statutory steps leading to the establishment of a maximum contaminant level. He stated that the Office of Environmental Health Hazard Assessment evaluates the health affects of certain contaminants. He indicated that recently, this Agency announced that the public health goal for perchlorate is 6 parts per billion (ppb); and that this agency believes that any amount above this level of concentration would be harmful to human health. He stated that the Department of Health Services, which regulates the

municipal water supplies, immediately established “an action level.” This is a level that is a precursor to the ultimate maximum contaminant level. This level has been established at 6 ppb as well. At this action level, public agencies are required to notify the City’s customers if water is to be served at or above this level. He clarified that this is not yet a mandatory maximum contamination but is an advisory action level. He indicated that the City has taken steps to ensure that the water delivered to the community meets or exceeds all federal and state regulations. He stated that the City is concerned about these kinds of regulations as a provider of domestic waters. In the meantime, another regulatory agency, the Regional Water Quality Control Board (Board), has the responsibility of ensuring cleanup of the site and the groundwater basin that has been contaminated in the 10 mile plume. This agency also has the authority, and has issued directives to Olin Corporation to provide alternative water supplies. He stated that yesterday, the Board directed Olin to develop its plan for alternative water supply based on the new public health goal of 6 ppb. He indicated that the regulatory scene is changing/evolving and that all of the responsible agencies are beginning to evaluate the effects of this change. He said that there may be additional decisions from the Board and other agencies with respect to this issue.

In response to Mayor Kennedy’s request, City Manager Tewes indicated that staff may be successful in inviting representatives from the Office of Environmental Health Hazards Assessment to attend a future meeting to explain the new goal so that the Council and the public will have a better understanding of what this goal means.

CITY ATTORNEY REPORT

City Attorney Leichter indicated that a monthly litigation summary is available to the members of the public. She announced that the long awaited decision in the San Jose Christian College case vs. the City of Morgan Hill was given on March 8, 2003. On a 3-0 decision by the justices, they found on all bases for the City of Morgan Hill. She stated that the ruling finds that neither the existence of the City’s zoning nor environmental laws, or the applications by the City Council resulted in a violation of the College’s freedom of speech, their exercise of religion or their freedom to assemble. She informed the Council that the College has 90-days to request review by the United States Supreme Court and that staff has not heard yet whether they intend to do so.

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening’s agenda.

Diane Lewis, Vista Del Valle, informed the Council that there is still a problem with the abandoned, unfinished home on Toro Vista. She indicated that construction was abandoned, started up again and re abandoned, noting that nothing has been done to the home since August 2002. She informed the Council that letters were sent to each Council Member some time back. She inquired as to what will be done with the monstrosity that has been looming in the neighborhood for five years.

No further comments were offered.

City Attorney Leichter stated that shortly after receiving the letter from the neighbors in October or November 2003, the City commenced enforcement proceedings. A citation was issued to the property owner; however, the citation was not signed by the property owner. She indicated that the court will not process a misdemeanor citation until the individual has signed for the citation. She stated that the City had to reissue the citation and get a process server to have the property owner sign the citation. In speaking with the attorney for the property owner, she has been advised that the property is in foreclosure and is undergoing bankruptcy proceedings. She said that the holders of the first and second deeds of trust are trying to work out a deal where one of them will wind up with the house and bring it to completion. She said that it is anticipated that this is to occur within the next 1.5-2 months. She stated that the City has had code enforcement officers visit the site in order to determine whether significant health hazards exist. It was her understanding that there has been some work done to bring the health hazards into compliance, and that it was found that there was not a significant threat to the public health and safety. She indicated that the police department has been notified and that it was her understanding that they have stepped up patrol in this area.

Mayor Kennedy requested that this item be agendaized for a future meeting in order to receive a status report.

City Attorney Leichter recommended a report be presented 30-60 days out as she did not believe that the bankruptcy proceedings will be settled until that time. Once the City files and serves the misdemeanor citation, it will take that long to have the hearings slated with the courts.

City Council Action

CONSENT CALENDAR:

City Manager Tewes requested that item 15 be removed from the Consent Calendar.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** Consent Calendar Items 1-14 as follows:*

1. **FEBRUARY 2004 FINANCE & INVESTMENT REPORT**
 Action: Accepted and Filed Report.
2. **AMENDMENT TO PURCHASE ORDER FOR SECURITY SYSTEM AT THE AQUATICS CENTER**
 Action: Authorized the City Manager to Approve an Amendment to Purchase Order Number 4899 for Bay Alarm Company in the Amount of \$17,000 for Additional Work on the Security System at the Aquatics Center Project.

3. **AMEND CONSULTANT AGREEMENTS FOR CONSTRUCTION SERVICES AT THE AQUATICS CENTER**
*Action: 1) **Amended** Consultant Agreement for the Second Time with ELS Architects for an Additional Fee, Not to Exceed \$50,000, Subject to City Attorney Review and Approval; 2) **Amended** Consultant Agreement with Biggs Cordosa Associates for an Additional Fee, Not to Exceed \$27,000, Subject to City Attorney Review and Approval; and 3) **Amended** Consultant Agreement with Pacific Geotechnical Engineering for an Additional Fee, Not to Exceed \$2,200, Subject to City Attorney Review and Approval.*
4. **AQUATICS CENTER PROJECT – FEBRUARY CONSTRUCTION PROGRESS REPORT**
*Action: **Information Only.***
5. **FOLLOW UP REPORT ON THE JACKSON OAKS DRIVE PRELIMINARY TRAFFIC CALMING STUDY BY FEHR & PEERS**
*Action: **Information Only.***
6. **AGREEMENT BETWEEN CITIES OF MORGAN HILL AND SAN JOSE FOR OBTAINING ORTHOPHOTO AERIAL PHOTOGRAPHS**
*Action: **Authorized** the City Manager, Subject to City Attorney Review and Approval, to Execute an Agreement with the City of San Jose for Obtaining Orthophoto Aerial Photographs of the City of Morgan Hill at a Cost of \$37,568.*
7. **FISCAL YEAR 2004-2005 BUDGET, CAPITAL IMPROVEMENT PROGRAM (CIP), AND WORKPLAN CALENDAR**
*Action: **Approved** Fiscal Year 2004-2005 Budget, CIP, and Workplan Calendar.*
8. **SUBDIVISION APPLICATION, SD-03-16: EAST CENTRAL-WARMINGTON (SOUTH)**
*Action: **Took No Action.** Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
9. **SUBDIVISION APPLICATION, SD-03-04: BARRETT-DITRI**
*Action: **Took No Action.** Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
10. **CHANGE ORDER APPROVAL FOR ADDITIONAL WORK ON THE SIDEWALK, CURB AND GUTTER REMOVAL AND REPLACEMENT, PHASE III, 2003-2004 PROJECT**
*Action: **Approved** Change Order in the Amount of \$22,500 for Additional Work on the Sidewalk, Curb & Gutter Removal and Replacement, Phase III 2003-2004 Project by Contractor Monterey Peninsula Engineering, Inc.*
11. **ADOPT ORDINANCE NO. 1657, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1657, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ENACTING SECTION 1.18.055 (Cost of Abatement - Definition) OF CHAPTER 1.18 (Abatement of Nuisances) OF TITLE 1 (Administration) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING DEFINITION OF COST OF ABATEMENT.**

12. ADOPT ORDINANCE NO. 1658, NEW SERIES

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1658, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-03-13 FOR APPLICATION MP-02-15: MISSION VIEW DRIVE-MISSION RANCH (APN 728-32-008 & 009).**

13. ADOPT ORDINANCE NO. 1659, NEW SERIES, AS AMENDED

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1659, New Series, as Amended, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A RESIDENTIAL PLANNED DEVELOPMENT AND PRECISE DEVELOPMENT PLAN FOR A 90-UNIT SINGLE-FAMILY PROJECT LOCATED AT THE NORTHEAST CORNER OF COCHRANE ROAD AND PEET ROAD (APNs 728-34-002 & -003) (ZA-03-15: PEET - LUPINE).**

14. ADOPT ORDINANCE NO. 1660, NEW SERIES, AS AMENDED

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1660, New Series, as amended, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-12: PEET – LUPINE INVESTORS/BORELLO (APNs 728-34-002 & -003) (DA-03-12: PEET - LUPINE).**

15. EXTENSION OF FIRE SERVICES CONTRACT.

City Manager Tewes presented the staff report, indicating that the City of Morgan Hill and the Santa Clara County Fire District have been discussing an extension to the City's fire and emergency medical services contract that has been in place for nearly nine years. He indicated that the contract is due to expire in 2005 unless extended. He stated that the City of Morgan Hill and the Fire District have reached a tentative agreement on the business terms of an extension through September 2007. Staff recommends that the City Attorney assist with the development of a final agreement to be presented for subsequent action by the City Council and ultimately by the Board of Supervisors. He indicated that this agreement provides for an extension at the same level of service and has a provision that would contemplate the

possibility of a new fire station. However, it is not anticipated that this would occur within the term of this extension. He said that there is an increase associated in costs with the agreement, but that it is recognized that the County Fire District has experienced increased costs over the 10-year contract period. He stated that the City has been well served by the agreement and that it has been a good deal. Staff believes that the extension would be a good deal as well. He stated that in the course of discussions, staff has learned that there are opportunities to revise certain fire prevention fees that would help pay for the new contract; ensuring that development pays its fair share of the costs such that they are not subsidized by taxpayers. Therefore, staff is requesting that the Council direct staff to develop the necessary studies to bring back revisions to the fire prevention fees.

Chief Lopes stated his support of staff's recommendation, recognizing that this was a long process. He said that it was important for both sides of these negotiations to identify and work through a number of issues that deal with changes in local government funding. As these are tough times, both parties are impacted by the current economy and that he appreciates the tough decisions that the Council has to make. He stated that during the course of these negotiations, staff represented the City's interest well while at the same time protecting public safety. He agreed that the City has been well served throughout the term of this agreement and that it is believed that the interests of the Fire District have been well served throughout the term of this agreement as well. He stated that the Fire District looks forward to the contract extension and providing opportunities to look at a unified effort in the south portion of the valley for fire protection services.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent: 1) **Authorized** the City Manager and City Attorney to Proceed in Developing a Final Agreement with the Santa Clara County Fire Department; and 2) **Directed** Staff to Develop a Fee Schedule for Fire Prevention Services that Achieves Full Cost Recovery for the Services Provided.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Mayor/Chairman Kennedy requested that item 19 be removed from the consent calendar.

Action: *On a motion by Mayor Pro Tempore/Vice-chair Sellers and seconded by Council/Agency Member Chang, the City Council/Agency Board, on a 4-0 vote with Council/Agency Member Tate absent, **Approved** Consent Calendar Items 16-18 as follows:*

16. AFFORDABLE HOUSING STRATEGY WORKPLAN.

Action: *1) **Approved** the Workplan; and 2) **Directed** Staff to Implement Recommendations.*

17. SAFEWAY TRAFFIC SIGNAL.

Action: 1) **Adopted** Resolution MHRA-249, the Morgan Hill Redevelopment Agency Resolution Authorizing the Transfer of \$25,000 to the City of Morgan Hill for the Purchase and Installation of a Traffic Signal at the Intersection of Tennant Avenue and Church Street benefiting the Tennant Station Shopping Center; and 2) **Adopted** Resolution No. 5773, the City Council Resolution Accepting \$25,000 from the Redevelopment Agency for the Above Referenced Traffic Signal; 3) **Approved** a Reimbursement Agreement Between the City of Morgan Hill and Safeway Incorporated to Authorize the City to Reimburse Safeway Incorporated in the Amount of \$25,000 for a portion of the Total Cost of the Traffic Signal; and 4) **Directed** the City Manager to do Everything Necessary to Implement the Agreement.

18. **JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF MARCH 3, 2004.**

Action: **Approved** the Minutes as Written.

19. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF MARCH 3, 2004.**

Action: On a motion by Mayor Pro Tempore/Vice-chair Sellers and seconded by Council/Agency Member Carr, the City Council, on a 4-0 vote with Council/Agency Member Tate absent, **Approved** the March 3, 2003 Minutes as amended [page 8, paragraph six of the Minutes (page 238 of the agenda packet) - correct City Attorney Leichter's title].

City Council Action

PUBLIC HEARINGS:

20. **ZA-03-19: CITY OF MORGAN HILL-ZONING TEXT AMENDMENT-COMMUNITY SIGNS AND CHANGEABLE COPY SIGNS FOR PUBLIC AGENCIES, SCHOOLS, PLAYHOUSES AND RELIGIOUS INSTITUTIONS** (Continued from 2/18/04).

Director of Community Development Bischoff presented the staff report, indicating that staff has not completed its legal review of this item. Therefore, staff recommends that the Council reconvene the public hearing and then table the item. Staff would renote and advertise the zoning amendment once it is ready for Council consideration.

Mayor Pro Tempore Sellers inquired whether the action would cost individuals additionally to have this item delayed until such time that the City is ready to proceed.

Mr. Bischoff said that the only party that is specifically waiting for the amendment to the zoning is the Community & Cultural Center, but that staff at the Community & Cultural Center has been able to deal adequately with this issue.

Mayor Kennedy reconvened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Tabled** this Application to the second meeting in April 2004.*

21. ZONING AMENDMENT, ZA-03-20; DEVELOPMENT AGREEMENT, DA-03-15: EAST CENTRAL-WARMINGTON (SOUTH) – Ordinance Nos. 1661 and 1662, New Series

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council, on a 4-0 vote with Council Member Tate absent, **Waived** the Reading in Full of Ordinance No. 1661, New Series.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council **Introduced** Ordinance No. 1661, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1601, NEW SERIES, TO ALLOW EXPANSION OF THE EXISTING RESIDENTIAL PLANNED DEVELOPMENT TO BE LOCATED ON THE NORTH AND SOUTH SIDES OF EAST CENTRAL AVENUE, TO R-1 (7000)/RPD. THE AMENDMENT INCLUDES THE ADOPTION OF A PRECISE DEVELOPMENT PLAN FOR THE 86-LOT, 28.345-ACRE RPD (APNs 726-20-003 & 726-28-048 through 052) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.***

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council, on a 4-0 vote, with Council Member Tate absent, **Waived** the Reading in Full of Ordinance No. 1662, New Series.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council **Introduced** Ordinance No. 1662, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT, DA-03-15, FOR 26 LOTS LOCATED ON THE SOUTH SIDE OF EAST CENTRAL AVENUE NORTH OF EAST MAIN AVENUE, FOR MP 02-19: E. CENTRAL - WARMINGTON (SOUTH) (APN 726-20-003), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.***

22. ZONING AMENDMENT, ZA-03-08; DEVELOPMENT AGREEMENT, DA-03-04: BARRETT-DITRI – Ordinance Nos. 1663 and 1664, New Series

Director of Community Development Bischoff presented the staff report.

Council Member Carr noted that the Planning Commission minutes reflect one planning commissioner voting against the motion based upon the noise levels. He inquired whether it was the belief of this planning commissioner that the noise levels were not being adequately addressed.

Mr. Bischoff indicated that the planning commissioner was concerned that the noise levels were very high. He stated that an expanded initial environmental study was prepared for this project that identified the noise levels, including mitigation(s) for the noise levels. He informed the Council that the consultant recommended that a sound wall be constructed on the eastern boundary of the property that would separate this project from the Jehovah Witness Church. However, a representative from the Church attended the Planning Commission meeting requesting that that sound wall be built on the Church's eastern boundary, adjacent to the freeway. The Church representative felt that this request would serve their needs as well as that of the new subdivision. He indicated that the Planning Commission agreed to the request with the stipulation that the wall is to be no higher than 8 feet. If it was found that the wall needed to be higher than 8 feet adjacent to the freeway, it would need to return to the Commission for further consideration.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council, on a 4-0 with Council Member Tate absent, **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council, on a 4-0 vote with Council Member Tate absent, **Waived** the Reading in Full of Ordinance No. 1663, New Series.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council **Introduced** Ordinance No. 1663, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A RESIDENTIAL PLANNED DEVELOPMENT AND PRECISE DEVELOPMENT PLAN FOR A 16-UNIT SINGLE-FAMILY PROJECT LOCATED ON THE NORTH SIDE OF BARRETT AVENUE, APPROXIMATELY 70 FEET WEST OF HIGHWAY 101. (APN 817-10- 002), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.***

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council, on a 4-0 vote with Council Member Tate absent, **Waived** the Reading in Full of Ordinance No. 1664, New Series.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council **Introduced** Ordinance No. 1664, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-20: BARRETT-DITRI (APN 817-10- 002)**, by the following roll call vote: **AYES:** Carr, Chang, Kennedy, Sellers; **NOES:** None; **ABSTAIN:** None; **ABSENT:** Tate.*

City Council Action

OTHER BUSINESS:

23. REVIEW OF VALLEY TRANSPORTATION AUTHORITY'S (VTA) VALLEY TRANSPORTATION PLAN (VTP) 2030 PROJECT LIST.

Director of Public Works Ashcraft presented the staff report. He highlighted the projects contained on the project list that were relevant to Morgan Hill and funding possibilities. He noted that the grant guidelines for livable communities/housing and scenic program has not yet been released. However, when released, the City would be applying for these grants. He stated that there is also an intelligent transportation system grant for inter connection of traffic signals.

Mayor Kennedy noted that the staff report did not include the Intelligent Transportation System (ITS). He stated that he specifically requested that it be added to the list.

Mr. Ashcraft stated that he was advised that the ITS program is on the VTA's official list but that it did not get included in the packet. He informed the Council that VTA held a public hearing in Morgan Hill last week to identify South County projects. He indicated that individuals in attendance addressed transit issues more so than roadway issues. He informed the Council that with VTP 2030, Morgan Hill will likely receive federal monies for roadway pavement/maintenance. As of 2005-06, the City will begin to receive additional monies for pavement maintenance, but that he did not have details on how much money the City is to receive.

Mayor Kennedy stated that as Morgan Hill's representative to the VTA, (alternate to the City of Milpitas); a workshop will be held this Friday that he will be attending. He will be raising the Intelligent Transportation System project that the City submitted to make sure that it remains on the list. He said that winners in the VTP 2030 project are the Bart extension to San Jose and the light rail extension to east San Jose/Capital corridor. A big loser is the Caltrain extension to South County as very little money was included in the budget for this extension. He said that a \$5 billion budget is proposed for the VTP 2030. He felt that this is an incredible amount of money that is earmarked but that the cost for the Bart and light rail extensions will utilize most of the available funds. He said that there were several members on the VTA Board who voted against the Bart extension in order to focus on funding for other projects. As San Jose has the bulk of the vote, it ultimately receives funding earmarked for their projects. He stated that he would be attending the meeting to be held on Friday and lobby on the City's behalf to

ensure that the City's projects are included in the VTP 2030, including the Intelligent Transportation System.

Mayor Pro Tempore Sellers noted that a few items on the list are not in the City of Morgan Hill such as the Gilroy's 10th Street upgrade. He noted that this project is currently being updated. He inquired if what is listed on the project list is the upgrade that is taking place or if this was a project that would be redone in the future. He referred to page 349 of the agenda packet. He noted that there were two projects that were listed as county projects that have significant impacts to Morgan Hill: the Hill Road extension and the DeWitt/Sunnyside realignment. He requested that staff address timing and connections. He inquired when VTA would set parameters for the housing grants as the City has a couple of projects that may be impacted.

Mr. Ashcraft indicated that several of the projects contained on the list have been completed and show up on the list for some reason. He indicated that Hill Road is proposed to be connected from Main to Peet Avenue. He was not sure as to the timing for the two road extensions. He said that VTA was talking about establishing a criteria and asking for grant applications within a year for livable communities and the housing project.

Council Member Carr indicated that the City of Palo took a vote against the project list as the dollars were all going to San Jose based projects (Bart and light rail). While Palo Alto is paying sales tax, they are not getting a return on the sales tax. He noted that the City's representative on the VTA Board is from Milpitas and that it was indicated that this individual would be voting with the San Jose block to approve funding for Bart and light rail. He inquired whether there was more that the Council can do.

Mayor Kennedy said that he would appreciate the Council taking a vote, similar to what the City of Palo Alto did, in opposition to the bulk of the money going to Bart with a small portion of funding going to Caltrain. He indicated that he has requested to meet with the three City group and that the timing would be appropriate to take this message back to the City's voting member. He felt that a vote opposing the list may be helpful and may turn the vote around if there were other cities who opposed the funding priorities. He said that there was a specific vote taken by the Board to authorize the expenditure of approximately \$14 million to proceed with the engineering of Bart. He did not understand the rush in supporting funding for Bart by the Board. It was the Board's argument that should the funds go off line, it would slow down the project. The members who voted against allocating funding for Bart wanted to take time to make sure that this is what the Board really wants to do. He stated that concern was expressed about rushing and making this large engineering dollar commitment.

Mayor Pro Tempore Sellers stated that this action is another reason to reconfigure the makeup of the VTA Board and allow for individual representation.

City Attorney Leichter said that it would be appropriate for the Council to request that the Mayor express opposition to the list but that the Council not take a formal vote in opposition.

Council Member Carr felt that it was important that the message not be one that opposes the Bart project but that it be stated that the South County Caltrain improvements have been on the docket for a long

time and never seems to rise to the level of being funded. He noted that Caltrain directly affects Morgan Hill and felt that this was a project that could be done sooner and that Morgan Hill would like to see a greater share of dollars be applied to this direction.

Mayor Kennedy opened the floor to public comment. No further comments being offered, the public hearing was closed.

Action: *By consensus, the Council **Received** the Proposed Valley Transportation Authority's VTP 2030 Program Area Lists for Impact to the City of Morgan Hill.*

24. COUNCIL CONSIDERATION OF COMMERCIAL RECREATION OPERATORS AT THE SPORTS COMPLEX.

Recreation and Community Services Manager Spier presented the staff report. She informed the Council that the Parks and Recreation Commission has put together a subcommittee of representatives from the non profit youth organizations in town and that meetings have been held. Meanwhile, the Mayor has been approached by a community member who inquired about the opportunity to consider having a commercial recreational-leisure venture or that the entire project becomes a commercial recreation venture. She inquired whether the Council would like staff to review these possibilities within the non profit recreation scope of the sports complex.

Mayor Kennedy indicated that he was approached by a member of the community who would like the City to consider a "Big League Dreams" concept. He stated that he has information about this concept to pass on to the Parks & Recreation Commission should the Council want the Commission to review the information. He said that Big League Dreams is one of several private corporations that partners with public entities to build public/private recreational facilities. This particular program builds softball fields designed after some of the major big league ballparks. The organization would work in conjunction with the City, with the City providing capital funds and Big League Dreams operating the facility. The developer states that the proposal would bring a net return to the City of approximately \$300,000 a year on average. He said that typically, if a city operates a sports complex, it would be a \$500,000 per year cost. They claim a net savings of approximately \$800,000 a year. He was not sure whether this was something that the City wants to consider. He suggested that the subcommittee of the Parks & Recreation Commission be requested to look at the private-public partnership as well as the other local programs, expanding the scope of what they are looking at.

Mayor Pro Tempore Sellers indicated that there is more than one potential private operator that may have some merit. He said that it is his understanding that the Parks & Recreation Commission subcommittee is just getting underway, looking at proposals. He recommended that the Council encourage the subcommittee to consider public-private opportunities, giving them the latitude to make an initial determination as to their merits. Their recommendation can be presented to the Parks and Recreation and then to the City Council. As long as this fits in with the subcommittee's plan, he felt that it would be great to expand the scope and have them consider the public private partnership.

Council Member Chang noted that there are public-private for profit and public-private for non profit possibilities and that this would result in two scopes of work. She inquired whether there was a preference of these two alternatives.

Mayor Kennedy said that he did not want to imply that this particular proposal or any other proposal was supported by the Council. He recommended that the Parks & Recreation Commission subcommittee take a look at the proposal and make a recommendation to the Council in line with the recent discussions the Council had with the Parks & Recreation Commission.

Council Member Carr supported giving the Parks & Recreation Commission subcommittee latitude without forwarding a preferred recommendation. This will allow the subcommittee to look at the proposal in the interest of what they are doing. He felt that it was important to know what is being provided in terms of facility. As the subcommittee looks at these partnerships and it begins to limit what the City is to provide to the community simply for the revenue sake, he felt that it is something that the Council will need to spend some time considering.

Council Member Chang noted that the City supported this project based on non profit organizations trying to secure playing fields. Therefore, she was having a problem embracing a profit oriented organization who would come to the City and take the land and not satisfy the non profit organizations' needs.

Mayor Kennedy said that when the Council gave the Parks & Recreation Commission its recommendation, the Council talked about the operating cost of the revenue side of the project. He felt that this would be a big issue associated with a public-private partnership. He stated that he did not want the Parks & Recreation Commission to consider this as an overriding factor in making their decision. He said that the determination of revenue is a Council decision. He indicated that it is the Council's policy to try to come as close as possible to breaking even with City facilities. He did not believe that the City was looking at making a profit.

Mayor Pro Tempore Sellers recommended that it be made clear to the subcommittee, and ultimately to the Parks & Recreation Commission, that it is the Council's goal to enhance services. He would like to enhance recreational opportunities for the community's youth. He did not want to take precious acres out of circulation merely to satisfy financial needs. He felt that the Council was in agreement that the goal is to enhance recreational opportunities.

Council Member Carr said that it is his hope that the subcommittee takes into account who has ultimate control of the project. He noted that the Council has stated that the City is to have ultimate control as it talked about other kinds of partnerships. He stated that the Council has not been willing to give up control of any recreational services.

Council Member Chang requested an update on the soccer complex be presented. She inquired what would happen to CYSA once their contract terminates next year. She felt that the local hotels/motels would suffer somewhat once the contract terminates.

City Manager Tewes indicated that the City of San Jose is conducting an environmental review of a project west of the Sobrato High School fields in an area that might provide as many as 17 soccer fields for a relocated soccer complex. He stated that the City of San Jose is working with a subgroup of the CYSA. Staff is hopeful that the environmental review would be completed quickly and that CYSA would be able to begin construction. However, he did not have the construction schedule. He said that within the next meeting or two, staff would return to the Council with a renegotiated lease with the CYSA for the Morgan Hill soccer complex. The lease arrangement would be established through December 31, 2004.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *The Council provided the above **General Direction** to be passed on to the Parks and Recreation Commission (subcommittee).*

25. CONTRACT AMENDMENT FOR RRM DESIGN GROUP.

Director of Community Development Bischoff presented the staff report.

Mayor Pro Tempore Sellers read from the staff report that amendments resulted in differing interpretations from Council direction regarding the structure of the document. He requested that staff clarify this statement.

Mr. Bischoff indicated that staff met with the Council some time ago about the Design Review Ordinance and the Architectural Review Handbook in terms of not being specific and did not provide good direction to applicants. This resulted in a number of problems. The direction staff heard from the Council was that it wanted a document that was specific; a document that developers could take and design their projects consistent with the document. He indicated that an earlier draft was taken to the ARB, a board consisting of individuals who are sensitive to design and realize that sometimes it is difficult to fashion documents that are specific, and yet allow for design creativity. The Board directed that the document be left vague and not be written so specifically. Subsequent to this direction, staff came before the Council and asked if staff misunderstood its intent. The Council advised staff that it wanted to put some certainty into the design process. The process of the document was that it went from specific, to more general and back to specific criteria that has caused this additional cost.

Mayor Kennedy opened the public comment. No comments were offered.

Action: *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** the Appropriation of \$12,000 from the Community Development Fund Balance (206) to Fund Unanticipated Costs Associated with the Consulting Service.*

Action: *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Tate absent, **Authorized** the City Manager to Execute an Amended Consultant Services Agreement, with the Final Form as*

Approved by the City Attorney, for Contract Consultant Services with RRM Design Group at a Cost Not to Exceed \$62,000.

City Council and Redevelopment Agency Action

OTHER BUSINESS:

26. LOAN FOR OFF-SITE IMPROVEMENTS FOR DAY WORKER CENTER.

Director of Business Assistance and Housing Services Toy presented the staff report, informing the Council that on February 18, 2004, it approved a loan to Weston-Miles for offsite improvements. At that time, the Council/RDA discussed the merits of the loan and the need to keep it short term in order to recycle funds. After much discussion, the Agency and the representative from Weston-Miles agreed that a five year term or when the site permanently developed, whichever came first, would be acceptable. Since that meeting, the applicant has rethought their position and is asking Agency reconsideration of the matter.

Mayor/Chairman Kennedy opened the floor to public comment.

Charles Weston said that his wife, (Ms. Leslie Miles), failed to mention, at the last meeting, that he and Mr. Toy negotiated a payment schedule that would take place in 5-10 years. He felt that a payment schedule was appropriate and fair because he needed a loan as the City does not have a mechanism in place to have a temporary use without full off site improvements. When he and his wife agreed to lend property to the dayworkers, there was not thought that they would have to outweigh something in the neighborhood of \$100,000 to facilitate this temporary move. It was their hope to install the offsite improvements at such time that he further developed the property. He stated that he was forced to ask for a loan to help facilitate the under grounding and other improvements to make the dayworker center a reality. By doing so, he is required to pay prevailing wages that adds \$25,000 more to the cost. He wanted to offset this extra cost by having a payment schedule. Another reason for the loan request is attributable to the fact that he did not believe that he would have to install the off site improvements for the dayworker center. He stated that he worked with civil engineers to construct and design the road on Depot from Main to the end of the property to the south. This took away from resources he had planned to use for the granary.

Mayor/Chairman Kennedy indicated that the process the Council/Agency should follow is to make a motion to reconsider the previous decision and then act on this decision at the next meeting. He inquired whether this item could be placed on the March 24 meeting agenda.

City Manager/Executive Director Tewes said that should the Council/Agency take action to reconsider, staff could schedule the item for the Council/Agency's meeting of March 24 or any other date the Council/Agency feels appropriate.

Mayor/Chairman Kennedy felt that time is of the essence because the dayworker project would be delayed by delaying a decision.

Mr. Weston informed the Council that part of the loan money would be used to install underground sewer and water hookups needed in order to continue with construction for the dayworker center.

No further comments were offered.

Council/Agency Member Carr stated that he was not sure if he was willing to reconsider a loan that was put into place that he did not support in the first place. However, he was willing to set the issue of the loan aside. He recommended that the City staff and Mr. Weston sit down and figure out a way not to require the installation of offsite improvements for a project that will be on the site for less than three years; costing Mr. Weston and Ms. Miles out of pocket dollars for a non profit organization. He noted that the Council/Agency went through a process of waiving onsite improvements for temporary uses. He stated that he was willing to consider doing the same for offsite improvements as well.

Mayor Pro Tempore/Vice-chair Sellers felt that if fees were to be waived for this project, even though it is a unique project; it will set a precedent for subsequent temporary uses. He said that the reason this issue came up was to facilitate the development of the dayworker center. He said that it was important to note that the dayworker center would be impeded from proceeding should the Council/Agency require installation of the offsite improvements. He felt that it was important to remember that the Council/Agency is being asked whether it would reconsider its previous action. He said that in general, the Council/Agency is generous with individuals requesting reconsideration. He stated that he would support this request and that during the intervening week, the Council/Agency consider whether it makes sense to proceed with the installation of offsite improvements or whether there were other options.

Council/Agency Member Chang indicated that water and sewer connections to the site needs to take place. She was not sure whether the curb, sidewalk, gutter and street improvements need to be installed at this time. She recommended that the Council/Agency agree to reconsider its previous action and discuss it further next week.

Council/Agency Member Carr felt that the Council/Agency has already set a precedent by putting together the temporary use and allowing the waiver of onsite improvements. He did not believe that having the discussion of deferring the offsite improvements would be difficult as the Council/Agency already went through a similar discussion with the onsite improvements. He noted that the last time an individual requested reconsideration the Council voted against reconsideration. He stated that this is a loan that was not voted upon unanimously and that it was troublesome to the Council/Agency when it first considered the loan and how to make it work. He stated that he would be willing to reconsider why the loan needs to happen in the first place. He noted that Mr. Weston indicated that he would not need the loan if he did not have to install the off site improvements being required by the City. Therefore, he was willing to consider this aspect instead of the loan.

City Attorney/Agency Counsel Leichter informed the Council that effective January 1, 2004, resolutions or ordinances or actions for payment of money require a majority vote of the Council. She said that it is

no longer acceptable to have a 2-1 vote for payment of money and that a 3-0 Council vote would be required to approve the payment of money.

Mayor Kennedy indicated that would be in Washington, D.C. on March 24 and that he would agree to participate in the meeting via telephone.

City Attorney/Agency Counsel Leichter indicated that Mayor/Chairman Kennedy could participate in the meeting via telephone but that this would necessitate posting the Mayor/Chairman's meeting location, allowing for public testimony.

Council/Agency Member Chang inquired whether it would be possible for Mr. Weston to honor his wife's commitment in order to make the project work.

Mr. Weston said that the offsite improvements need to be installed at this time. He clarified that the offsite improvements include curb, gutter and sidewalk that he and the dayworkers could live without. However, the undergrounding of utilities cannot wait as the building cannot function without sewer, water and the various other parts that go into making a building functional. Regarding his ability to pay back a loan in five years, he said that he could do so. However, the prevailing wage issue is somewhat vague but that the amount of the loan would exceed \$100,000. If the Council/Agency could not see to changing the terms of the loan, he would honor his wife's commitment to the Council/Agency.

Mayor/Chairman Kennedy indicated that he was going to recommend that the March 24 meeting be cancelled and that a meeting be scheduled for another date.

City Manager/Executive Director Tewes noted that the next item on the agenda is the discussion of future meeting dates. He stated that Mayor/Chairman Kennedy had indicated to him that it was his intent to discuss which items might be on the March 24 meeting agenda. If that is important to this discussion, the Council/Agency may want to hold its action on this item until it concludes the discussion of its future meeting schedule.

Mayor Pro Tempore/Vice-Chair Sellers felt that there might be an opportunity to figure out a way to negotiate the loan without having to come back before the Council/Agency. He recommended that the Council/Agency move forward with rescheduling the action subject to offline discussions about the terms of the loan agreement. He felt that discussion can be held on March 24 to see what has transpired. He felt that there may be opportunities for compromise in order to avoid going through the loan reconsideration. If not, the Council/Agency is to schedule this item for March 24 or a future meeting date.

Mr. Weston informed the Council/Agency that he has worked the process to the point where the site would have serious drainage problems if he did not connect the granary to the drainage in place.

Mayor/Chairman Kennedy said that it seems as though the Council/Agency could vote on the issue of reconsidering as its first motion/action and then discuss the date of the next meeting.

City Manager/Executive Director Tewes said that should the Council/Agency want to exempt this temporary use or other temporary uses, it would require an amendment to the ordinance and that this could not be done quickly.

Council/Agency Member Chang noted that the improvements need to be installed and stated that she would support reconsideration of the previous action.

Action: *On a motion by Mayor Pro Tempore/Vice-chair Sellers and seconded by Council/Agency Member Chang, the City Council/Agency Board, on a 4-0 vote with Council/Agency Member Tate absent, **Agreed** to reconsider the previous action taken at the February 18, 2004 meeting, including the terms of the loan and improvements that need to be installed at the next Council/Agency meeting.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Mayor Kennedy indicated that he would be in Washington, D.C. with the Santa Clara Water District to lobby, on the City's behalf, for flood control funding for the PL 566 project. He stated that he would prefer to postpone the March 24 meeting, if agreed to by the Council/Agency.

City Manager/Executive Director informed the Council/Agency that Wednesday, March 31 is a City holiday. He indicated that there are two items scheduled for March 24 that the Council needs to be mindful of: the discussion of the urban limit line (at the request of the Council); and 2) the annual public hearing on the Community Development Block Grant allocation that has been noticed for March 24. He informed the Council that the County needs the information on the City's CDBG block grants by the end of the month. If the Council cannot meet on Wednesday March 24, the Council will need to conduct a special meeting prior to the end of the month.

Mayor Kennedy indicated that he would avail himself via telephone for a March 24 meeting.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 8:53 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY